

**TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING  
SEPTEMBER 27-28, 2005  
HOUSE ROOM C, GENERAL ASSEMBLY BUILDING  
9<sup>TH</sup> & BROAD STREETS  
RICHMOND, VIRGINIA**

**Convene –Tuesday, September 27, 2005 - 9:00 A.M.**

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## RECESS

WEDNESDAY, SEPTEMBER 28, 2005

Reconvene – 9:30 A.M.

### XIII. Formal Hearing

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W

### ADJOURN

**NOTE:** The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing. If a public hearing is held, a summary of the public comments received is provided to the Board for their consideration when making the final case decision. Public comment is accepted on consent special orders for 30 days.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of

this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

**The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.**

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cmberndt@deq.virginia.gov](mailto:cmberndt@deq.virginia.gov).

Water Quality Standards Adoption of Seven Waters in the Shenandoah National Park for Exceptional State Waters Designation: Executive Summary, Background, Issues, Summary and Response to Public Comments, Final Regulation Agency Background Document: Staff will request Board adoption of amendments to the Water Quality Standards regulation that designate seven waters located totally on publicly owned land within the boundaries of Shenandoah National Park as Exceptional State Waters. Two of these proposed waters (East Branch Naked Creek and Jeremys Run) are 303(d) listed waters, but both still qualify for consideration for Exceptional State Waters designation because the waters meet two of the three eligibility criteria – exceptional environmental setting and exceptional recreational opportunities. During the Notice of Public Comment there were three comments in support of designation of the seven waters and three comments from the Page County farming community in opposition because of concerns about potential impacts on farming operations and the tourism industry. However, the stream segments proposed for designation are within the Shenandoah National Park and were developed in collaboration with national park staff who indicated they had no plans for any types of activities or growth that would result in the necessity of point source discharges to the proposed waters. All agricultural operations are outside of the national park and downstream of the proposed designations which limits the possibilities for the burden of regulatory controls related to mixing zones or any other aspect of point source discharges downstream and outside the boundaries of the park. The seven waters are: Big Run, Doyles River, East Branch Naked Creek, East Hawksbill Creek, Jeremys Run, North Fork Thornton River, and Piney River.

Request to Proceed to Public Hearing and Comment on Proposed Amendments to the Water Quality Standards to Designate Two Tributaries of the Pedlar River and a Portion of the North Fork of the Buffalo River and Three of Its Tributaries for Special Protection as Exceptional State Waters: Staff will request Board approval to proceed to Notice of Public Comment and hearing with proposed amendments to the Water Quality Standards regulation to designate as Exceptional State Waters six segments of waters located totally on publicly owned land within the boundaries of the US Forest Service in Amherst County. Although the US Forest Service is of the opinion that neither tributary to the Pedlar River (Shady Mountain Creek and Roberts Creek) meet the criteria necessary to be considered for Exceptional State Waters designation, the DEQ staff site visit made to verify eligibility determined these two creeks were eligible because they met two out of the three criteria: possessing an exceptional environmental setting and providing outstanding recreational opportunities. The remaining waters satisfied all three criteria. The water bodies are: two tributaries of the Pedlar River and a portion of the North Fork of the Buffalo River and three of its tributaries for special protection as Exceptional State Waters; the tributaries to the Pedlar River are Shady Mountain Creek and Roberts Creek; and the tributaries to the North Fork of the Buffalo River are Cove Creek, Little Cove Creek, and Rocky Branch as well as a portion of the North Fork Buffalo River from its confluence with Rocky Branch downstream to the National Forest Boundary. All are located within Amherst County.

Request to Proceed to Public Hearing and Comment on Proposed Amendments to the Water Quality Standards to Designate Several Tributaries to Simpson Creek as Exceptional State Waters: Staff will request Board approval to proceed to Notice of Public Comment and hearing with proposed amendments to the Water Quality Standards regulation to designate as Exceptional State Waters four tributaries to Simpson Creek. This proposal was prepared in response to the Board's directive to staff at its March 15, 2005 meeting to continue its evaluation of portions of Simpson Creek and its tributaries that flow through National Forest lands to determine those portions that are entirely contained within National Forest property and to determine the eligibility of those portions for Exceptional State Waters designation.

Consideration of Citizen Petition to Designate the Hazel River as an Exceptional State Water: The Board will receive: 1) a briefing from staff on a June 28, 2005 citizen petition to amend the Water Quality Standards regulation and 2) a request for authorization to initiate the required State Code and Administrative Process Act notifications and opportunity for comment on this petition. Ms. Sally Mello submitted an updated petition to reactivate her 2002 request to designate the entire main stem of the Hazel River from its headwaters in Rappahannock County to its confluence in Culpeper County with the Rappahannock River as an Exceptional State Water. A 5.58 mile segment of the river does not support recreation use due to fecal coliform exceedences from an unknown source; Ms. Mello attributes the source to wildlife and states that the water body is still exceptional.

Point Source Nutrient Control Regulations for Dischargers in the Chesapeake Bay Watershed: Staff intends to ask the Board to adopt amendments to two point source discharge control regulations: Regulation for Nutrient Enriched Waters and Dischargers Within the Chesapeake Bay Watershed (9 VAC 25-40), and Water Quality Management Planning Regulation (9 VAC 25-720). These actions follow the Board's decision, at their June 28, 2005 meeting, to adopt the amended regulations and suspend the effective date to allow for another 30-day public comment period. The comment period ran from July 25 to August 24, 2005, and a public meeting was held on August 11, 2005. Based on comments received and staff review of the regulations, further amendments have been developed and will be presented to the Board for consideration. A sizable number of comments were received from sixty-nine respondents, including local governments, public wastewater treatment authorities, industrial facilities, stakeholder organizations, citizen groups, individuals, and a federal agency. Some of the major categories that the comments can be grouped into include:

- Significant Dischargers requesting increased nutrient waste load allocations.
- Assigning waste load allocations for Non-Significant Dischargers; provide incentives for regionalization or other trading considerations for smaller dischargers.
- Allowance for "net" loads and "bioavailability" of nutrients discharged by publicly owned treatment works.
- Opposition to adopting James and York waste load allocations until after approval of final water quality standards for these basins; consider less stringent requirements that can achieve same environmental objectives.

#### SUBSTANCE OF AMENDMENTS AND REVISIONS

1. **Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed; 9 VAC 25-40:** The major revisions made to the June 28, 2005 amended regulation are as follows:
  - a. Deleted first paragraph under 9 VAC 25-40-70 since it is only a descriptive paragraph and does not add any requirements.
  - b. Added a provision under 9 VAC 25-40-70.A.4 that less stringent technology-based standards and associated concentration limitations may be established for dischargers where such standards and concentrations for the nutrient technology installed would degrade receiving waters, such as a reservoir used as a public water supply.
2. **Water Quality Management Plan Regulation; 9 VAC 25-720:** The major revisions made to the June 28, 2005 amended regulation are as follows:
  - a. Revised the definition for "Significant Discharger" to clarify that dischargers "downstream" of the fall line are covered. Prior wording referred to "east" of the fall line which would not include the Bay dischargers on the Eastern Shore which are west of its fall line.
  - b. Deleted the definition for "trading" since the term "exchanged" is used in 9 VAC 25-720-40 of the regulation to match the terminology used in the Code of Virginia.



- c. Clarified under 9 VAC 25-720-40.B. and C. that when limiting a discharger to that portion of its allocation that is either bioavailable or is the net nutrient load portion, such limits must set consistent with the assumptions and methods used to derive allocations through the Chesapeake Bay models.
- d. Added a new Section D to 9 VAC 25-720-40 to clarify that the Board may adjust individual allocations through amendment to the regulation. Reasons for an adjustment include, but are not limited to:
  - A discharger completes a plant expansion as evidenced by issuance of a Certificate to Operate by December 31, 2010. Some dischargers may successfully expand their treatment facilities even though they were not able to provide reasonable assurance at this time that their expanded facility would be operating by 2010.
  - To ensure the river basin nutrient load allocations are achieved. The river basin allocations represent attainment of water quality standards. Future adjustments to the point source allocations may be necessary to achieve water quality standards.

Any adjusted individual waste load allocation must maintain water quality standards.
- e. Clarified in the waste load allocation tables that the total allocations in the tables relate to the listed facilities and not the total allocations (point source plus nonpoint source inputs) for each basin.

## **PUBLIC COMMENT ISSUES**

Many detailed comments were received from 69 respondents. Among these were requests for revised nutrient waste load allocations for 42 significant dischargers (14 located in the Shenandoah-Potomac, 7 in the Rappahannock, and 1 in the Eastern Shore basins; 6 in the York, and 14 in the James basins). Several wrote letters of support for the waste load allocation increase requests, while others provided general comments on the content and provisions of the amended point source nutrient discharge control regulations. General comments and responses are summarized below.

### **A. Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed (9 VAC 25-40)**

1. **Comment:** Revise regulation to exempt a technology-based standard and associated concentration limits in those cases where such limits would not be protective of receiving water quality. (Upper Occoquan Sewage Authority)

**Response:** *Studies have shown that the discharge of nitrate-nitrogen to the Occoquan Reservoir from the Upper Occoquan Sewage Authority regional treatment plant helps water quality by suppressing the release of phosphorus bound to the bottom sediments in the reservoir. Such a release of phosphorus would contribute to excessive algae blooms in the reservoir, impacting its use as a drinking water sources. Staff agrees with this assessment and has included wording under 9 VAC 25-40-70.A.4. that allows the application of less stringent technology-based standards and associated concentration limits in order to protect receiving water quality.*

2. **Comment:** Regulation should not include technology based concentration limits; also, DEQ should provide guidance to facilitate NPS offsets. (Coors)

**Response:** *as part of the overall watershed approach, nutrients need to be reduced wherever possible from all sources amenable to treatment. Efficient operation of treatment plants is a reliable, cost-effective and equitable means of reducing nutrients. If plants are discharging below their design flow and treating for nutrient reduction at the efficiency of the system installed, the reduced nutrient load it will also provide credits available to other communities and industrial plants. Guidance to facilitate nonpoint source offsets will be provided through the Watershed General Permit program (another rulemaking underway under authorization of the Nutrient Credit Exchange Program legislation).*

3. **Comment:** Retain technology-based numerical limits as a “backstop”, regardless of alternative compliance methods established for facilities certified under Environmental Excellence Program. (Chesapeake Bay Foundation, R. W. Ehrhart)

**Response:** *Concentration limits, based on the technology installed, will still appear in the facility’s discharge permit, with a provision that they do not apply so long as the plant is certified under the Environmental Excellence Program at the “E3” or “E4” level. Permit limits would apply immediately upon decertification.*

**B. Water Quality Management Planning Regulation (9 VAC 25-720)**

1. **Comment:** Several dischargers in the Shenandoah-Potomac, Rappahannock, and Eastern Shore Basins have requested additional nutrient load allocations due to claims they will have expanded treatment facilities in operation by 2010.

**Response:** *Establishing nutrient load allocations has been based, in part, on the design capacity of the wastewater treatment facility that is certified to operate by 2010. Owners of 17 treatment facilities have requested additional nutrient load allocations due to claims their facilities will be expanded by that date. After staff review of the information submitted by these owners, 12 of these requests were judged to have provided reasonable assurance that their treatment facility would be certified to operate at the expanded flow by 2010. In these cases, the higher allocation was included in the regulation, although some of these also included a footnote in the river basin table that stated the allocation would revert to the amount based on their existing design flow if the expanded facilities were not on-line by 2010.*

*While the proposed regulation does not include a higher allocation for the remaining owners staff believes some assurance should be provided that an increase in allocation will be considered in the future should their facility be expanded and operational by 2010. A new section, 9 VAC 25-720-40.D., has been added to recognize that the Board may amend the regulation in the future to adjust individual nutrient load allocations for a number of reasons, including completion of a plant expansion as evidenced by issuance of a Certificate to Operate by December 31, 2010. The section also states that any adjustments to allocations must ensure water quality standards are maintained.*

*Based on staff review of requested waste load allocation increases, figures in the Water Quality Management Planning Regulation either remain unchanged or have been revised as appropriate to increase or decrease waste load allocations (WLA), as follows for facilities in the Shenandoah-Potomac, Rappahannock, and Eastern Shore Basins:*

**Shenandoah-Potomac**

- **Augusta Co. S.A.: Weyers Cave STP** - WLAs currently based on 0.5 MGD, request increase based on 3.0 MGD. ACSA claims plant needs major expansion to serve potential industrial development. WLAs remain unchanged, as project is still in very early planning stages and increase is requested to enhance recruitment efforts, rather than serve anticipated and expected customers in the development.
- **Dale Service Corporation: DSC #1 and #8 STPs** – WLAs currently based 4.0 MGD design flow for each plant; request increase based on 4.6 MGD for each. DSC provided details on planned increase in number of residences in service area from 2005-2010, which this public service company is obligated to accommodate. Also provided description of existing plant that includes 70% of the infrastructure needed for increased flows, financing plan, and milestone schedule. WLAs have been revised based on 4.6 MGD at each plant, but Certificate to Operate (CTO) for expansion must be secured by December 2010, or WLAs will decrease based on a design flow of 4.0 MGD for each plant.
- **Fauquier Co. W&SA: Vint Hill STP** – WLAs currently based on 0.6 MGD and total nitrogen (TN) of 3.0 mg/l; request increase based on 0.95 MGD, and TN concentration of 8.0 mg/l. Owner provided information about current upgrade/expansion activities in two phases, both to be complete by 2010. WLAs have been revised based on 0.95 MGD, but CTO for expansion must be secured by December



2010, or WLAs will decrease based on a design flow of 0.6 MGD. Basis for TN concentration used to calculate WLAs remains unchanged. Owner justified request based on information supplied by Upper Occoquan S.A. regarding impacts from nitrate discharges to Occoquan reservoir. While TN from UOSA has been demonstrated through monitoring and modeling to reach the reservoir in the form of NO<sub>3</sub>, which aids in protecting water quality, no such modeling exists for the discharge from Vint Hill. This factor led to the decision when the permit was last reissued to treat the 0.95 MGD discharge as having no impact, positive or negative, on the reservoir when setting limits for all effluent parameters.

- Frederick-Winchester S.A.: Opequon STP - Basis for WLAs remains unchanged. Wet weather tier accommodates excessive infiltration and inflow, which is not a design flow for seasonal capacity needs achieving full treatment. Although receiving stream conditions have assimilative capacity to accept higher wet weather effluent discharge without violating water quality standards locally, there are downstream impacts on tidal water quality and impairments due to excessive annual loads of nutrients from all sources.
- Frederick-Winchester S.A.: Parkins Mill STP - WLAs currently based 3.0 MGD; request increase based on 5.0 MGD. The discharge permit is currently undergoing modification to include a 5.0 MGD flow tier, and owner has begun the process to upgrade/expand plant (Preliminary Engineering Report being drafted), with construction scheduled for completion in 2009. WLAs have been revised based on 5.0 MGD, but CTO for expansion must be secured by December 2010, or WLAs will decrease based on a design flow of 3.0 MGD.
- Harrisonburg-Rockingham Regional S.A.: North River STP – WLAs currently based 16 MGD; request increase based on 20.8 MGD. HRRSA has applied for permit reissuance (April 2006) with a design flow basis of 20.8 MGD. Engineering for the increased capacity began May 2005 and is scheduled for completion January 2007; project schedule shows completion of construction and issuance of the CTO by December 2009. WLAs have been revised based on 20.8 MGD, but CTO for expansion must be secured by December 2010, or WLAs will decrease based on a design flow of 16.0 MGD.
- Loudoun County S.A.: Broad Run STP – WLAs currently based 10 MGD; request increase based on 11 MGD. Request does not depend on additional construction beyond current project, but seeks a re-rating of system installed. LCSA's design engineer has stated that the plant's 11 MGD design criteria, identified as Maximum 30-day Flow in the March 2003 Design Development Report, is a continuous hydraulic and treatment design flow capacity that can reliably achieve the target performance in accordance with Virginia's Sewerage regulations. LCSA plans to seek a revised Certificate to Construct and subsequent CTO based on this design criteria. WLAs have been revised based on 11 MGD, but CTO for plant re-rating must be secured by December 2010, or WLAs will decrease based on a design flow of 10 MGD.
- Merck - WLAs currently based on 10.09 MGD (outfall 001, final surface water discharge), TN = 3.13 mg/l, and TP = 0.5 mg/l. Merck's discharge permit being reissued to include nutrient monitoring at internal Outfall 101, which accounts for just treated process wastewater stream (excludes cooling water). WLAs revised based on 1.2 MGD, TN = 4.0 mg/l, and TP = 0.3 mg/l.
- Town of Mount Jackson STP – WLAs currently based 0.6 MGD; request increase based on 0.7 MGD. Plant recently received a new permit for the 0.6 MGD expansion tier, and submitted a request for modification to 0.7 MGD on 8/24/05, to serve an industrial customer that was not anticipated in the approved PER, which is being updated to account for the additional flow. Plant scheduled to be in service within 3 years. WLAs have been revised based on 0.7 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 0.6 MGD.
- Town of New Market STP – WLAs currently based 0.5 MGD; request increase based on 1.0 MGD. Basis for WLAs remains unchanged. No expectation of CTO for expanded design flow by 2010, based on information provided.

- Town of Purcellville: Basham Simms STP – WLAs currently based 1.0 MGD; request increase based on 1.5 MGD. Town accepted proposed WLAs for 1.0 MGD plant in 7/04 permit reissuance, which included compliance schedule for nutrient control system installation by 7/1/09. Recent study indicates flows are increasing rapidly due to unprecedented growth in service area and base flows generally higher than those used in basis of design (likely due to inaccuracies in flow measuring equipment previously used at the plant that has been replaced in new facility). Engineer has begun planning/design for proposed upgrade and expansion, and Town submitted permit modification request 8/26/05 for a 1.5 MGD flow tier. WLAs have been revised based on 1.5 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 1.0 MGD.
- Shenandoah Co.: Stoney Creek STP – WLAs currently based 0.6 MGD; request increase based on 1.2 MGD. Basis for WLAs remains unchanged. No expectation of CTO for expanded design flow by 2010, based on information provided.
- Stafford Co.: Aquia STP – WLAs currently based 8.0 MGD; request increase based on 12.0 MGD. Basis for WLAs remains unchanged. No expectation of CTO for expanded design flow by 2010, based on information provided.

#### **Rappahannock**

- Culpeper County: Mountain Run STP – WLAs currently based 1.5 MGD; request increase based on 2.5 MGD. Permit reissued on 6/21/05 which included a design flow tier of 1.5 MGD. County will submit an application to increase the permitted capacity to 2.5 MGD, to serve a large commercial and mixed use development that is projected to produce approximately 0.75 MGD. Mountain Run plant will also incorporate two currently permitted plants (Airpark plant and Elkwood plant), with plans for 2.5 MGD capacity to be on-line by 2010. WLAs have been revised based on 2.5 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 1.5 MGD.
- Culpeper County: South Wales STP – WLAs currently based 0.6 MGD; request increase based on 0.9 MGD. County expects to have 0.9 MGD facility constructed by Jan. 2008; PER and permit document the higher design flow. WLAs have been revised based on 0.9 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 0.6 MGD.
- Town of Culpeper STP – WLAs currently based 4.5 MGD; request increase based on 6.0 MGD. Basis for WLAs remains unchanged. No expectation of CTO for expanded design flow by 2010, based on information provided. Town of Culpeper's request for increased capacity included an expectation to accommodate flows from surrounding portions of Culpeper County. As noted in response to comments from Culpeper County (above), the County has documented their intention to provide service to these areas, thus removing the need for this capacity in the Town's plant.
- Fauquier Co. W&SA: Remington STP – WLAs currently based 2.0 MGD; request increase based on 2.5 MGD. Plant has approximately 90% of the infrastructure already installed to operate at the permitted 2.5 MGD tier; only minor appurtenances and improvements necessary to allow plant to operate at the 2.5 MGD tier (additional blowers to increase aeration capacity and additional ultraviolet disinfection units). WLAs have been revised based on 2.5 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 2.0 MGD.
- Fauquier Co. W&SA: Marsh Run STP – requested WLAs for a proposed facility to replace failing septic tanks in the communities of Catlett and Calverton. Facility appears unlikely to be built by 2010, as no planning, design, or construction actions have been taken to-date, therefore no WLAs assigned and new discharge will be addressed, if it occurs, under the provisions of the Nutrient Credit Exchange Program legislation. County will have the option of distributing the WLAs from the other facility it owns and operates in the Rappahannock basin (Remington STP) between these two plants. County's comment that the Board should develop a policy for taking septic systems off-line

into a treatment facility, with an allowance for load allocations, will be dealt with under another rulemaking now underway for the Watershed General Permit (authorized by the 2005 Nutrient Credit Exchange Program statute).

- Haymount Ltd. Partnership: Haymount STP – WLAs currently based 0.58 MGD; request increase based on 0.96 MGD. Certificate to Construct for the 0.58 MGD plant is about to be issued, with many of the treatment units to be installed with capacity for 0.96 MGD. Schedule for completing increased sizing for remaining units to bring full plant design flow to 0.96 MGD anticipates issuance of CTO in summer 2008. WLAs have been revised based on 0.96 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 0.58 MGD.
- Omega Protein – WLAs currently based on long-term average production flow figure of 3.21 MGD (outfall 001 = 3.0 MGD + outfall 002 = 0.21 MGD). Owner claimed design flow of 4.0 MGD for outfall 001 and 0.4 MGD for outfall 002; these are daily peak flow maximums, which is an unlikely operating status to be sustained under normal production conditions over the course of an entire year. Omega's comment letter admitted that this peak level was reached only 50-60% of the time under representative data from 2004. The main factor in deciding the production flow figure is the amount of fish processed over a year. On 8/17/05, the Atlantic Marine States Fisheries Commission (AMSFC) approved Addendum II to the Menhaden Fisheries Management Plan, which established a 5-year annual cap, beginning in 2006, on reduction fishery landings in Chesapeake Bay based on the mean landings over the last 5 years. The production-based long-term average flow figure of 3.21 MGD is considered appropriate and equitable under the restrictions approved by the AMSFC, in addition to another key factor of production used to calculate Omega's WLAs, the number of days of operation, which has been assumed at the theoretical maximum of 198 days/year.

#### **Eastern Shore**

- Town of Onancock STP – WLAs currently based 0.25 MGD; request increase based on 0.75 MGD. Onancock's plant has been discharging near its current permitted capacity for the last 4 years (annual average flows in 2003 and 2004 were 0.25 MGD), and recent Basis of Design Report for nutrient reduction has concluded that additional capacity must be constructed by 2010. The Town intends to submit a permit application for the higher flow tier, and anticipates expanded facility to be constructed and certified for operation by 2010. WLAs have been revised based on 0.75 MGD, but CTO for increased design flow must be secured by December 2010, or WLAs will decrease based on a design flow of 0.25 MGD.

***Requests for increased waste load allocations from dischargers in the York and James basins have been deferred at this time, and will be addressed when final recommendations for the special water quality standards proposed for those waters (site-specific dissolved oxygen in the Pamunkey and Mattaponi; numeric chlorophyll criteria in the James) are presented to the Board for consideration at a future date.***

**2. Comment:** Regulation should state that non-significant dischargers have waste load allocations based on current permitted capacity and total nitrogen and total phosphorus concentrations reflecting no additional treatment; provide explicit allocations for non-significant plants; allow owners of multiple facilities to "bubble" the allocations and manage them collectively, including non-significant dischargers. (Rapidan S.A., Spotsylvania Co., Virginia Association of Municipal Wastewater Agencies)

**Response:** Only those significant dischargers included in the WQMP regulation have assigned waste load allocations; the non-significant dischargers do not. Therefore, any "bubbling" of loads by an owner of multiple treatment plants only applies to those plants that are significant dischargers with assigned waste load allocations. The Code of Virginia, at §62.1-44.19:14 and 15, describes the responsibilities for the non-significant dischargers to offset any nutrient loads discharged over their permitted design capacity as of July 1, 2005. While the significant dischargers at their design capacity



*need to reduce their nutrient loads, the non-significant dischargers are responsible to offset any increase in their nutrient load resulting from expansion above their current design capacity.*

**3. Comment:** Policy needed to allow all or some of the existing nutrient load from non-significant dischargers to be utilized when another plant takes them off-line; develop an equitable plan to support and promote regionalization of smaller, less efficient treatment plants into larger facilities with better treatment capability; concerned that regulation only targets major dischargers. (Fauquier Co W & SA, Augusta Co. S.A., Steven Herzog, Spotsylvania Co.)

**Response:** *The WQMP regulation only deals with allocations for Significant Dischargers. Non-Significant Dischargers are dealt with through the rulemaking now underway for the Watershed General Permit (WGP; authorized by the 2005 Nutrient Credit Exchange Program statute). The agency will consider means through the WGP process to not discourage regionalization, but also to recognize the need to maintain loading caps. For example, one approach to consider is if a Significant Discharger takes a non-significant discharger off-line through regionalization, then a load equivalent to the design flow of the Non-Significant Discharger treated at state-of-the-art levels would transfer to the Significant Discharger. Any such load transferred to the Significant Discharger would have to be added to its waste load allocation through amendment to the Water Quality Management Planning Regulation.*

**4. Comment:** Clarify that any adjustments that limit the allocations to either the bioavailable portion of the nitrogen or the net nutrient load are done consistent with the assumptions and methods used to derive allocations through the Chesapeake Bay models. (EPA)

**Response:** *Staff recognizes that the nutrient load allocations assigned to the point source dischargers, along with the allocations assigned to all of the other sources of nutrients within each of the river basins, must in combination achieve and maintain the water quality standards in the Chesapeake Bay and in the tidal tributary rivers. Staff agrees with this comment and has included wording under 9 VAC 25-720-40.B. and C. so that any adjusted limits are consistent with the approach used with the Chesapeake Bay models.*

**5. Comment:** Technology-based waste load allocations, being more stringent than Federal requirements, are beyond the Board's authority and procedurally flawed for failure to notify the General Assembly. (Hanover County, Virginia Association of Municipal Wastewater Agencies)

**Response:** *DEQ staff have relied on a opinion from the Attorney General (July 9, 1984) that provides, in part:*

- *The Authority of the Board, set out under statute in the Virginia Code, is restricted by the Federal Water Pollution Control Act (the "Act"), which prohibits the State from adopting certain requirements on the discharge of pollutants that are less stringent than Federal requirements. The Act preserves the rights of the State to impose requirements that are more stringent.*
- *The provisions of the Act...could include treatment requirements for nutrients arising from...(2) any more stringent limitations necessary to implement applicable water quality standards established pursuant to the Act. (emphasis added)*
- *Regarding category (2) above,...if the administrator of EPA determines that a State's standards satisfy the requirements of the Act, those standards become the water quality standards for the applicable waters of the State. ...I am of the opinion that water quality standards approved in this manner are required by the applicable provisions of the Act, and are enforceable by the Board. (emphasis added)*

*Therefore, achieving and maintaining compliance with the recently adopted tidal water quality standards for the Bay and its tributaries can result in treatment requirements for political subdivisions that are more stringent than Federal treatment requirements, and are enforceable. The General Assembly was notified about the potential for these regulations to be more stringent than requirements of the Federal Clean Water Act, by memorandum dated February 18, 2005. This*

*notification was not specific to a particular level of stringency, and would cover any treatment level necessary to support compliance with water quality standards.*

**6. Comment: Regulations treat all nutrients entering the Bay the same although modeling shows that the York and James have little impact on Bay; regulations may encourage growth on septic systems whereas new flows should be on state-of-the-art plants; regulations not consistent with trading law since they treat all pounds the same in the tributaries but the law does not allow trading between basins. (Steven Herzog)**

*Response: The Water Quality Management Planning Regulation allocates loads based on a watershed approach that does recognize the different impacts nutrients discharged within each river basin have on the Bay and on the water quality within each of the tributaries themselves. While staff does not believe the proposed regulations will encourage growth served by septic systems, it is a potential problem that will need to be monitored closely and further regulatory or legislative actions may be needed if it becomes a problem. The regulations have been amended to be consistent with the 2005 Chesapeake Bay Watershed Nutrient Credit Exchange Program legislation.*

**7. Comment: Treatment plants must start reducing pollution, but they [limits] must be scientifically attainable; insist they meet state of the art and are constantly upgraded. (Sherilynn Hummel)**

*Response: Staff agrees that wastewater treatment plants have a critical role in reducing the overall nutrient loading to the Bay and tidal rivers. The allocations are set at levels that require the use proven nutrient reduction technologies.*

**8. Comment Account for nitrogen and phosphorus in raw water supplies; account for non-bioavailable nitrogen without amending regulation; extend applicability of these provisions beyond industries to include POTWs also. (Loudoun Co. S.A., Virginia Association of Municipal Wastewater Agencies)**

*Response: The provision to allow consideration of nutrient loading within a plant's intake water is limited to industrial dischargers that demonstrate to the satisfaction of the Board that a significant portion of the nutrient load originates in its intake water. This is not the case with publicly owned treatment facilities which primarily treat sewage from residences and businesses. Municipal water supplies also receive extremely stringent purification and disinfection treatment prior to distribution, so the characteristics of the raw water are very different from the drinking water. Regarding non-bioavailable nitrogen, the Water Quality Management Planning Regulation will not have to be amended since any limitation approved for the non-bioavailable nitrogen will be a portion of the assigned waste load allocation.*

Repeal of Two General VPDES Permit Regulations: (1) Discharges of Storm Water From Construction Activities (9 VAC 25-180); and (2) Discharges of Storm Water From Small Municipal Separate Storm Sewer Systems (9 VAC 25-750): The purpose of this agenda item is to request that the Board repeal two VPDES General Permit Regulations: (1) Discharges of Storm Water From Construction Activities (9 VAC 25-180); and (2) Discharges of Storm Water From Small Municipal Separate Storm Sewer Systems (9 VAC 25-750). This is a "housekeeping" action to finish up some previous regulatory activities. The 2004 General Assembly adopted legislation that transferred the VPDES construction activity and municipal separate storm sewer system (MS4) storm water permitting responsibilities from DEQ to the Department of Conservation and Recreation (DCR). Those programs were transferred to DCR on January 30, 2005. The two general permit regulations were transferred to DCR at the same time, however, the actual SWCB regulations are still on our books. This proposed action will repeal the two general permit regulations, and will finalize this regulatory process. The Board previously adopted amendments to the VPDES Permit Regulation (9 VAC 25-31) in December, 2004, that removed the construction activity and MS4 permitting requirements.



General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day, 9 VAC 25-110 : This is a final regulation. The staff will ask the Board to adopt the regulation establishing the General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day, 9 VAC 25-110, as amended. The General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day provides coverage for discharges from single family residences and other small sources of domestic sewage when central sewage facilities are not available and the land is not suitable for conventional on-site treatment, such as that of septic tank and drainfield systems. In addition to reissuing the general permit regulation, other amendments include changes or updates to the effluent limits, registration requirements and permit special conditions. No further changes to the general permit regulation were made following the public comment period.

Amendments to the following sections of the Water Quality Management Planning Regulation 9 VAC 25-720: 9 VAC 25-720-50.B for the Potomac-Shenandoah River Basin, 9 VAC 25-720-80.B for the Roanoke River Basin, 9 VAC 25-720-90.B for the Tennessee - Big Sandy River Basin, 9 VAC 25-720-130.B for the New River: The Board will be asked to approve final amendments to the Water Quality Management Planning Regulation to revise waste load allocations for conventional pollutants assigned to point source dischargers in several river basins. The Part B portions of the regulation (9 VAC 25-720) currently contain stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations. They no longer reflect current water quality conditions and need to be updated to provide consistency between the regulation and other impacted related water quality management programs. Also, the format of Part B of the regulation needs to be standardized and changed to provide consistency throughout the regulation.

Withdrawal of proposed Regulation for Wastewater Reclamation and Reuse 9 VAC 25-740-10 et seq.: On April 9, 2000, the General Assembly approved House Bill 1282, which amended Sections 62.1-44.2 and 62.1-44.15:15 of the Code of Virginia. Section 62.1-44.2 now defines the purpose of the State Water Control Law to, among other things, promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. Additionally, Section 62.1-44.15:15 authorizes the Board to promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters. On October 3, 2002, the Board authorized a public hearing and public comment period on the referenced proposed regulation. Public comments were received from February 24 through April 25, 2003 and at a public hearing held on April 2, 2003. Upon review of public comments, it was determined by the Department of Environmental Quality, Office of Water Permit Programs (DEQ-OWPP), that a broader and more flexible regulation strategy should be developed for wastewater reclamation and reuse than that proposed in the draft regulation. Subsequently, no further action to develop the proposed regulation was taken. The DEQ-OWPP will now be publishing four notices of intended regulatory action, one of which will be for a technical regulation on wastewater reclamation and reuse, and three for General Virginia Pollution Abatement Permit Regulations on reclaimed water reuse. The latter general permit regulations will reference the technical regulation. Therefore, all four regulations will be developed concurrently. Due to the significant lapse of time between the original and currently proposed regulatory actions, and to avoid public confusion regarding two similar regulatory actions, the agency recommends that the Board withdraw the original proposed regulatory action.

Approval of Publication of Proposed Virginia Water Protection Permit WP5 Regulation (9 VAC 25-800) for Minor Surface Water Withdrawals: At the September 27, 2005 Board meeting, the staff will ask for Board authorization to take the above referenced Proposed Regulation to public comment. The

proposed Virginia Water Protection (VWP) General Permit WP5 will authorize small surface water withdrawals, provided that the uses and amounts comply with the conditions established within the general permit. The general permit creates three categories of water use (public water supply, agricultural, and other) and establishes maximum withdrawal limits that are formula based. The regulation unconditionally authorizes eleven minor and common types of water withdrawals that have little adverse environmental impact. The regulation does not apply to certain categories of surface water withdrawals. The proposed VWP general permit regulation will reduce the permitting burden to the public in which it will serve and will decrease the amount of agency resources spent on issuing more lengthy Virginia Water Protection individual permits.

Proposed Amendments to the Virginia Water Protection Program Permit Regulation (9 VAC 25-210): These are proposed amendments to the existing regulation. The staff will ask the Board to accept the draft regulatory amendments to the Virginia Water Protection Program (VWPP) Regulation (9 VAC 25-210), and authorize the initiation of a public hearing process. The substantive changes to the Virginia Water Protection Program (VWPP) regulation contained in these amendments include 1) clarification of which water withdrawals are excluded from the permit requirement and under what conditions; 2) the institution of a new pre-application panel and public information meeting process for surface water projects; 3) the creation of an Emergency Virginia Water Protection Permit for public water supplies during drought; 4) the inclusion of new language regarding permit conditions for withdrawals in the Potomac River consistent with the Potomac Low Flow Allocation Agreement; 5) new language defining what information will be considered in the evaluation of cumulative impacts to instream flow; 6) clarification of what information is submitted by the applicant to demonstrate that an alternatives analysis has been conducted; 7) the creation of a new variance provision to address permit conditions during drought; and 8) establishment of a new joint public notice process for surface water projects requiring both a VWPP permit and a Virginia Marine Resources permit. There are also a number of administrative amendments that will allow for a more efficient and understandable application, review and issuance process. There is another regulatory action related to this rulemaking that is currently underway regarding establishment of a General Permit for Minor Surface Water Withdrawals (9 VAC 25-800).

General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Car Wash Facilities (9 VAC 25-194-10 et seq.): At the September meeting, the staff will be asking the Board to authorize notice and public hearings on the draft general permit regulation that will reissue this general permit for another five-year term. This is a reissuance of an existing regulation, and the only changes to the regulation are designed to clarify the intent of the regulation. Changes to the attached draft general permit regulation are indicated by deleted language stricken through and new language underlined. There are no major changes being proposed.

Proposed Amendments to the Water Quality Standards – Criteria to Protect the Designated Uses of Lakes and Reservoirs from the Impacts of Nutrients: Staff will request Board approval to proceed to Notice of Public Comment and hearing with proposed amendments to the Water Quality Standards regulation to adopt: 1) special nutrient standards for the two natural lakes in Virginia – Mountain Lake and Lake Drummond, 2) chlorophyll a and total phosphorus criteria for 116 man-made lakes and reservoirs that the Department has previously monitored or plans to monitor, and 3) application of existing dissolved oxygen criteria during thermal stratification to only the upper layer in the lake-like portion of man-made lakes and reservoirs that will be protected from the effects of nutrient enrichment by the proposed numerical criteria.

TMDL Reports: Straight Creek (Wise County) - Fecal Bacteria and Benthic TMDLs, Callahan Creek (Wise County) – Fecal Bacteria and Benthic TMDLs and Russell Prater Creek (Buchanan and Dickenson Counties) - Benthic TMDL: The requested action constitutes the first time staff has asked the State Water Control Board to approve a submittal of TMDL reports to the Environmental Protection Agency. The three affected TMDL reports have generated a lot of interest from the coal mining industry because coal mining activities are identified as a major source of the benthic (biological) impairments. Recently, TMDL reports for Callahan Creek and Straight Creek in the Powell River watershed and for Russell Prater Creek were completed. These TMDLs must be submitted to EPA for approval on or before May 1, 2006. These TMDLs address violations of the general standard resulting from benthic degradation and violations of the bacteria criteria. Coal mining activities are identified as a major source of the impairments. Excessive sediment expressed in terms of total suspended solids (TSS) and elevated concentrations of total dissolved solids (TDS) are the pollutants or stressors identified as causing the biological degradation. Commonly, watersheds disturbed by coal mining activities have elevated concentrations of dissolved ions such as iron, manganese, sulfates, carbonates, and many other minerals. We do not have water quality criteria for many of these dissolved constituents. Therefore, the Department of Mines, Minerals, and Energy (DMME) and DEQ decided to represent these many dissolved minerals in aggregate as TDS. Also, there are many references in the technical literature where studies have shown that elevated TDS levels have adverse effects on the biological life in the streams, such as pollution intolerant micro-invertebrates. After consultation with EPA, the two state agencies decided to identify TDS as a significant pollutant or stressor. DMME is the agency delegated to issue mineral extraction permits. These and other TMDLs involving mineral extraction are developed as a partnership effort by the two agencies. Pollutant reductions required by the TMDL waste load allocation (WLA) component of the TMDL are implemented through DMME's permitting process.

**REPORT ON SIGNIFICANT NONCOMPLIANCE:** Two permittees were reported to EPA on the Quarterly Noncompliance Report (QNCR) as being in significant noncompliance (SNC) for the quarter ending March 31, 2005. The permittees, their facilities and the reported instances of noncompliance are as follows:

1. Permittee/Facility: Omega Protein Inc., Reedville Facility  
Type of Noncompliance: Failure to Meet Effluent Limits (Ammonia Nitrogen and Cyanide)  
City/County: Reedville, Virginia  
Receiving Water: Cockrell's Creek  
Impaired Water: Cockrell's Creek is listed on the 303(d) report because of a shellfishing restriction, in effect since 1993. The cause of the contamination which lead to the restriction is unknown.  
River Basin: Chesapeake Bay  
Dates of Noncompliance: May 2004 through January 2005  
Requirements Contained In: VPDES Permit  
DEQ Region: Piedmont Regional Office  
An administrative order addressing the referenced violations was approved by the Board at its June 2005 quarterly meeting.
2. Permittee/Facility: Dominion Virginia Power, Chesterfield Facility  
Type of Noncompliance: Failure to Meet Effluent Limit (Total Suspended Solids)  
City/County: Chester, Virginia  
Receiving Water: James River  
Impaired Water: The James River, at the location of the Virginia Power discharge, is listed on the 303(d) report because of elevated levels of fecal

coliform and e. coli in the River and because of contamination of fish tissue by PCBs, with an accompanying Virginia Department of Health fish consumption restriction. The source of the fecal coliform and e. coli impairment is believed to be urban runoff from the River's drainage basin as well as combined sewer overflows in the City of Richmond. The source of the PCB contamination is unknown.

River Basin: James River  
Dates of Noncompliance: January, February and March 2005  
Requirements Contained In: VPDES Permit  
DEQ Region: Piedmont Regional Office  
An administrative order addressing the referenced violations was approved by the Board at its June 2005 quarterly meeting.

Two Greens/Kirkpatrick, L.L.C., Loudoun County - Consent Special Order w/ Civil Charges: DEQ issued a VWP Permit for the Kirkpatrick Farms development on December 6, 2001. The permit authorized 2.86 acres of jurisdictional waters permanent impacts, consisting of 1.11 acres of palustrine forested (PFO) wetlands, 0.40 acres of palustrine emergent wetlands, 860 linear feet of perennial stream channel, and 12,775 linear feet of intermittent stream channel. Compensation consisted of off-site mitigation of 2.60 acres of PFO wetlands creation and enhancement and restoration of 10,400 linear feet of intermittent stream channel riparian buffers; and on-site restoration and enhancement of 1,900 linear feet of perennial stream channels and 1,500 linear feet of intermittent stream channels riparian buffers. The Permit required that construction of the off-site mitigation be initiated within twelve months of the Permit's effective date, or by December 6, 2002. Planting of on-site restoration/enhancement areas was required to be initiated within 24 months of the Permit's effective date, or by December 6, 2003. Neither the off-site nor on-site mitigation was begun within the required timeframe. In a letter from Kirkpatrick's consultant dated July 3, 2003, it was explained that, although DEQ had approved the mitigation plan on January 22, 2002, the approval was not received from the Army Corps of Engineers until March 5, 2003. The construction plan had not yet been approved by Loudoun County. This letter requested that the deadline for off-site mitigation be extended to March 1, 2004. The extension was not approved by DEQ. Subsequently, Kirkpatrick determined that the Permit needed to be amended to authorize additional impacts resulting from various site plan modifications as well as a redelineation of a portion of the project area. Kirkpatrick submitted a permit major modification request on August 28, 2003 to authorize additional impacts and a delay in initiating the mitigation. This request was withdrawn on November 26, 2003 because further site plan modifications were required. A second permit modification request was submitted October 22, 2004 which has not been approved by DEQ. Therefore the requirements to initiate off-site and on-site mitigation remained December 6, 2002 and December 6, 2003, respectively, as required in the original Permit. The Order requires Kirkpatrick to obtain a permit modification to authorize the additional impacts. In addition to completing the normally required mitigation to compensate for the impacts, Kirkpatrick has agreed to perform supplemental mitigation consisting of 0.51 acres of forested wetlands creation and 1,308 linear feet of riparian buffer enhancement/restoration. Kirkpatrick has estimated the cost of the extra mitigation to be \$183,000. Civil Charge: \$4000.

Kim and Pak, Inc., Fauquier County - Consent Special Order - Issuance: Kim and Pak, Inc. owns the New Baltimore Shell Sewage Treatment Plant which it purchased from Cecil's Service and Equipment, Inc. in July 2004. The STP serves a convenience store/service station, retail auto sales center and a dry cleaning facility. The Board issued a Consent Order to Cecil's Service & Equipment, Inc. on December 5, 2003 to address BOD, ammonia, and TSS exceedences. Pursuant to the Order, Cecil's



modified the secondary recirculation pump system and installed an insulated cover over the sand filter. The purpose of this Order is to transfer the outstanding Schedule of Compliance items from the original Order to the new owner. New Baltimore Shell had an exceedence of its TSS limits in October 2004 and a chlorine violation in November 2004. The owner attributed the exceedences to a release of dechlorination tablet particulate and bridging of tablets in the dechlorinator feed tubes. The owner made operational and maintenance changes to the tablet feed system thereby addressing the exceedences. The Order requires New Baltimore Shell to close the STP and connect to the public sewer system when the Fauquier County Water and Sanitation Authority makes sewer service available to the facility. Sewer lines are currently expected to reach the area in April 2006. Civil Charge: none.

Twin Oaks Community, Inc., Louisa County - Consent Special Order w/ Civil Charges: The Twin Oaks Community STP is a 0.01-MGD plant located in Louisa County, Virginia that treats domestic sewage from the residents of the community. Twin Oaks' permit, reissued on September 20, 2004, required the facility to hire a licensed operator to oversee the daily operation of the plant. This requirement was added to the permit to ensure timely submittal of documents because the facility had a history of submitting documents late. The permit also required Twin Oaks to submit a revised Operations and Maintenance (O&M) Manual and Sludge Management Plan (SMP) by December 20, 2004 and a Sludge Management report that is annually due by February 19<sup>th</sup>. Twin Oaks failed to submit these required documents and hire a licensed operator in the timeframes specified in the permit.

Twin Oaks explained that they had a staff member in place to manage the STP until a licensed contractor could be hired. This interim manager abruptly left the community before a licensed contractor or an adequately trained community member could take over the responsibilities. The proposed Order requires Twin Oaks to: (1) increase sampling of CBOD5, TSS, and Ammonia from once every month (1/M) to once every (1/W) through the December 2005 monitoring period; (2) implement a procedure designed to ensure responsibilities and requirements related to permit compliance submittals are handled in a timely manner by June 30, 2005; (3) submit a revised SMP, O&M Manual, and Sludge Management report by June 30, 2005; and (4) employ or contract a Class III licensed operator to oversee the operations of the STP. The cost of contracting a licensed operator to take over daily operations of the STP and complete the documents for submittal is approximately \$3,700 a month. Civil Charge - \$7,000.

VA-Marshall III, L.L.C., Fairfax County - Consent Special Order w/ Civil Charges: VA-Marshall III, L.L.C. (Marshall) owns the John Marshall III site which is occupied by a nine-story office building located in McLean, Fairfax County, Virginia. The site is managed by Equity Office Properties Management Corporation (Equity). Groundwater from the underground foundation drainage system is treated prior to discharge with an air stripper to remove trace levels of volatile organic compounds from the groundwater. The treated groundwater is then discharged into the Fairfax County storm water sewer system, which drains into Old Courthouse Spring Branch. The previous permit required that Marshall submit the results of monthly monitoring not later than the 10<sup>th</sup> of the month after monitoring takes place. The required discharge monitoring reports (DMRs) were not received in a timely manner for the months of August, September, December 2003, and January, February, and March 2004. The April 2004 DMR was submitted on time, but was incomplete. Additionally, the permit required Marshall to submit an application for reissuance of the permit by March 12, 2004. The application was not submitted until April 25, 2004. When the permit was reissued in July 2004, the required monitoring period was changed from monthly to quarterly. Marshall failed to submit the fourth quarter 2004 DMR on time by January 10, 2005. Additionally the reissued permit required Marshall to either submit a revised Operations and Maintenance Manual or a statement that the current Manual was



accurate by October 8, 2004. This requirement was not satisfied until January 28, 2005. The Order requires VA-Marshall III to submit a written procedure to ensure the permit requirements are met in a timely manner and to submit Discharge Monitoring Reports on a monthly basis. Civil Charge: \$5,000.

Honeywell Nylon LLC, Chester - Consent Special Order – w/Civil Charges: Honeywell Nylon LLC (Honeywell) manufactures synthetic resins and man-made organic fibers (nylon 6) at this facility. On August 11, 2004, a caprolactam pump failed causing an unusual discharge at outfall 002. The pump failure resulted in an effluent violation of Total Organic Carbon (TOC). On December 30, 2004, problems at Dominion Virginia Power caused a power failure in Honeywell's polymer trains. This resulted in a loss of electronic control in the chip conveyance system and water mixed with caprolactam was discharged through outfall 002. Honeywell reported an exceedance of the TOC permit limit on the December 2004 DMR. On December 31, 2004, problems at Dominion Virginia Power caused a system wide power failure at Honeywell. Once power was restored a sump pump with a blown gasket was found overflowing and discharging to outfall 002 to exceed its TOC limit in January 2005. On March 8, 2005, the Department issued an NOV for TOC violations in August and December 2004 and January 2005. The Department and Honeywell met on February 17, 2005, to discuss compliance issues at the nylon plant. Honeywell has increased their maintenance schedule to inspect the facility pumps and conveyance systems more often. Civil Charge: \$2,400.

Town of Jarratt, Greensville County - Consent Special Order w/ Civil Charges: The Greensville County Water and Sewer Authority ("Authority") by agreement with the Town of Jarratt operates and maintains the Town of Jarratt's sewage treatment plant. On January 22, 2004, the Authority was issued a Notice of Violation for effluent violations for several months in 2003, an overflow in June 2003, and for failure to provide sufficient information concerning the effluent violations. Effluent violations continued into 2004 and 2005. In addition there was an additional overflow of unknown volume in July 2004. In January and February the design capacity of the Facility was exceeded. The Authority attributes the Permit limit exceedances to inflow and infiltration (I&I) in the Facility's collection system. The Department received a letter dated July 27, 2004 which outlined the course of action the Authority intends to follow to address the I&I issues. The proposed Consent Special Order requires the Authority to develop a Capacity, Management, Operation and Maintenance (CMOM) plan which is a comprehensive plan that identifies funds, operations, maintenance, training, ordinances and any other components necessary for proper operation and maintenance of the Facility's collection system. During the development of the CMOM, the Facility will also provide the Department a shorter range corrective action plan (CAP) which will focus on short range projects to help bring the Facility into compliance. The Order also provides for interim effluent limits for BOD5 until the requirements of the CAP can be completed. There is no way to determine the cost of the injunctive relief until the study can be completed. Civil Charge: \$1,610.

Mechanicsville Concrete, Inc. d/b/a/Powhatan Ready-Mix, Henrico County - Consent Special Order w/Civil Charges: Mechanicsville Concrete, Inc. (MC, Inc.) owns and operates a ready mix cement facility on Portugee Road in Henrico County. MC, Inc. submitted its permit reapplication on September 25, 2003, failing to meet the April 4, 2003, re-application deadline which resulted in the unpermitted operation of the facility from October 1, 2003 to April 21, 2004. On April 15, 2004, a Department inspection noted evidence of unauthorized discharges from the facility. The Department recommended corrective action in its inspection report to prevent further unauthorized discharges and reminded MC, Inc. of its permit reporting requirements. MC, Inc failed to comply with the inspection reporting requirements as requested. An NOV was issued on May 20, 2004 for failure to reapply for the permit, failure to submit operating logs, and for unpermitted discharges to White Oak Swamp. On

August 5, 2004, a citizen's complaint was received by the Department concerning a turbid water discharge from the MC, Inc facility. A Department inspection revealed an unauthorized discharge from the facility and an NOV was issued on November 12, 2004, for the unauthorized discharge and for failure to report it. The Department held a meeting with MC, Inc. on November 30, 2004 to discuss the violations cited in the NOV. During the meeting, proper discharge and reporting procedures were discussed as required in the permit. The Order only requires the payment of a civil charge. Civil Charge: \$16,250.

Burns Equipment Co., Inc., Suffolk - Consent Special Order with Civil Charge: Burns Equipment Co., Inc. doing business as Womack Contractors (CI of Suffolk) ("Womack") owns and operates the Burris Borrow Pit ("facility") which is a sand mining operation. Womack was subject to General Permit No. VAG84 through Registration No. VAG843030. For continued coverage under the General Permit, Womack was required to submit a registration statement to DEQ no later than December 31, 2003; DEQ received the statement on August 10, 2004 and issued Registration No. VAG840002 on October 4, 2004. Womack did not have permit coverage for discharge of process wastewater and storm water associated with industrial activities from July 1, 2004, through October 3, 2004. In response to a complaint, DEQ inspected the facility on September 23, 2004. The inspection revealed a discharge from the facility flowing into an existing creek bed that flows into Lake Kilby. In addition, facility records indicate that from September 15, 2004 to September 23, 2004 and from September 27, 2004 to September 28, 2004, process wastewater was pumped from the borrow pit to a settling basin, which discharges to State waters. Estimated daily average flows for these events were documented at .048 MGD and 0.41 MGD respectively. DEQ records do not indicate that these discharges were reported. On October 13, 2004, DEQ issued a Notice of Violation advising Womack of the above findings and applicable regulatory and statutory citations. The order would require Womack to pay a civil charge within 30 days of the effective date of the order in settlement of the violations. Womack signed the consent order on June 21, 2005. Civil Charge: \$9,100.

Capital Concrete, Inc., Virginia Beach and Norfolk - Consent Special Order with Civil Charge: Capital Concrete, Inc. ("Capital") owns and operates ready-mixed concrete plants and is subject to the Permit through Registration No. VAG110058 for the Virginia Beach facility, and Registration No. VAG110036 for the Norfolk facility. On October 7, 2004, DEQ Compliance Staff ("Staff") conducted a routine inspection of the Virginia Beach facility and documented deficiencies, which included: (a) failure to develop and/or maintain an Operations and Maintenance ("O & M") Manual; (b) failure to conduct daily freeboard inspections and maintain an inspection log as required by the Permit; (c) failure to update its Storm Water Pollution Prevention Plan ("SWP3"); (d) failure to perform and/or document quarterly visual examinations of storm water quality; (e) failure to perform and/or document monthly inspections; and (f) failure to conduct and/or document the comprehensive site compliance evaluation ("CSCE") for calendar year 2003. On October 18, 2004, Staff conducted a routine inspection of the Norfolk facility and documented deficiencies, which included: (a) failure to develop and/or maintain an O&M Manual; (b) failure to conduct daily freeboard inspections and maintain an inspection log; (c) failure to update its SWP3; and (d) failure to perform and/or document quarterly visual examinations of storm water quality. In addition, staff observed a discharge containing concrete solids at storm water outfall 001. The discharge was not reported to DEQ as required by the Permit. On October 29, 2004, and November 4, 2004, DEQ issued Notices of Violation ("NOV") to Capital advising Capital of the deficiencies. Since the issuance of the NOV, Capital has submitted an updated SWP3, documentation of daily freeboard inspections for part of November 2004, an O&M Manual, and a copy of the quarterly visual storm water quality inspection report for the 4<sup>th</sup> quarter of 2004. Additionally, Capital has indicated that they have taken significant measures to ensure that all required inspections are conducted and documented in accordance with the Permit requirements and they have

redesigned the pit where the discharge was observed to prevent future spills. The order would require Capital to pay a civil charge within 30 days of the effective date of the order, in settlement of the violations. Civil Charge: \$3,220.

Colonna's Ship Yard, Incorporated, Norfolk - Consent Special Order with Civil Charge: Colonna's Ship Yard, Incorporated ("Colonna") owns and operates a vessel repair and maintenance facility (the "Shipyard"). Colonna's VPDES Permit authorizes Colonna to discharge storm water and process wastewater from two floating drydocks. The VPDES Permit specifies, among other things, that all TBT wastewaters must be treated prior to discharge and establishes a daily maximum concentration effluent limit for TBT. On June 25, 2003, Colonna personnel reported to DEQ that on or about May 12, 2003, a release of untreated TBT contaminated wastewater occurred while maintenance/repair operations were being conducted on the USS Kauffman while drydocked at the Shipyard. The contents of the USS Kauffman's sonar dome were pumped onto the drydock floor which resulted in a discharge. Colonna further reported to DEQ that a release of untreated TBT contaminated wastewaters occurred on June 14, 2003, while Colonna personnel washed out the USS Kauffman's sonar dome contents. Laboratory results indicated the sludge contained a concentration of 327 ug/Kg of TBT. The quantity of released untreated TBT contaminated wastewaters in these incidents is unknown. The work contract between Colonna and the Navy, regarding the USS Kauffman, states that the sonar rubber dome contains organotin antifouling material and requires disposal in accordance with federal, state, and local laws, codes, ordinances, and regulations. On December 14, 2004, Colonna commenced pressure washing the hull of the sailing yacht Globanna M at the Shipyard, which resulted in a release of untreated TBT contaminated wastewater. The specification worksheet for the Globanna M, generated by Colonna, discloses that the existing hull paint on the Globanna M contained TBT. According to Colonna, the specification sheet was not provided to the dayshift paint supervisor prior to commencing hull-washing operations. Reportedly, once the dayshift paint supervisor became aware that hull was coated with TBT paint, the supervisor took immediate action to stop the hull washing until the wastewater could be captured. On December 22, 2004, Colonna reported the discharge of 1013 gallons of untreated TBT wastewater associated with this operation. Laboratory analysis indicated the released wastewater contained 59 ug/l of TBT, which exceeds the Permit daily maximum concentration effluent limit of 0.720 ug/l. On January 29, 2004 and January 24, 2005, DEQ issued Notices of Violation to Colonna regarding the incidents and advised Colonna of applicable regulatory and statutory citations. The order would require Colonna to comply with its permit requirements and pay a civil charge within 30 days of the effective date of the order. The order would also require Colonna to modify its standard operation and procedure manual to incorporate procedural guidelines regarding work associated with TBT and provide training to all personnel performing or supervising work associated with TBT. Civil Charge: \$40,000.

Raphine Environmental Improvement Company, L.L.C., Rockbridge County - Consent Special Order with a civil charge: Raphine Environmental Improvement Company, L.L.C. (REIC) owns and operates the STP (design capacity of 0.035 MGD) serving approximately 90 mobile homes, the Days Inn Motel, two apartment buildings, certain single family residences, and the Raphine Wilco and Raphine Texaco service stations in Rockbridge County, Virginia, which was the subject of the 1999 Permit. On June 21, 2002, REIC apparently took ownership of the Facility from Glenn M. Koogler, without either party notifying DEQ and requesting a transfer of the permit to a new owner. On December 9, 2003, DEQ issued the 2003 Consent Special Order to the Facility to address ammonia effluent limitation violations. The 2003 Order required the REIC/Koogler to come into compliance with the Permit, State Water Control Law and the VPDES Permit Regulation by December 31, 2006, and to select one of three options to come into compliance by that date. REIC notified DEQ that it intended to connect to the proposed Rockbridge County PSA sewer line extension that is presently

scheduled to be completed in late 2006. The 2003 Order also provided interim TSS and ammonia effluent limitations. The Permit, the VPDES Permit Regulation and the 2003 Order required REIC/Koogler to submit a complete application for reissuance of the Permit by June 15, 2004. Based on REIC/Koogler's failure to submit the application for reissuance by June 15, 2004, DEQ issued a Warning Letter to REIC/Koogler on June 21, 2004. Based on REIC/Koogler's failure to respond to the Warning Letter, on July 7, 2004, DEQ issued a Notice of Violation to REIC/Koogler. DEQ issued an NOV on June 22, 2004, to REIC/Koogler for Permit effluent limitation violations and the 2003 Order's ammonia interim effluent limitations violations. On August 17, 2004, DEQ met with REIC/Koogler in an informal conference to discuss the NOV's citations of ongoing failure to submit a complete and approvable permit application and the Order's ammonia interim effluent limitations violations. DEQ issued additional NOVs on August 11, 2004, September 22, 2004, and November 8, 2004, to REIC/Koogler for violations of the 2003 Order's ammonia interim effluent limitations. Based on REIC/Koogler's continuing failure to apply for reissuance of the Permit, on December 12, 2004, the Permit expired. On December 14, 2004, REIC/Koogler submitted an approvable Permit application. However, REIC/Koogler was also required to submit a closure plan and draft financial assurance mechanism by June 15, 2004, in order for DEQ to reissue the Permit. To date, REIC has not submitted an approvable closure plan and financial assurance mechanism. REIC has been unable to submit an approvable closure plan and draft financial assurance mechanism due to apparent difficulties in securing and contracting a third party operator to operate the Facility in accordance with the regulatory requirements or provide an approvable closure plan. DEQ issued an NOV on January 5, 2005, to Koogler for violations of the 2003 Order's ammonia interim effluent limitations, late submittal of the permit application due June 15, 2004, failure to submit a facility closure plan due June 15, 2004, failure to submit a draft financial assurance mechanism due June 15, 2004, and for unpermitted discharges following the expiration of the Permit. On February 2, 2005, DEQ met with REIC/Koogler in an informal conference to discuss the January 5, 2005 NOV and resolution of the violations. The February 5, 2005 meeting included discussions of the Facility operations, the need for submittals of an approvable closure plan and financial assurance mechanism, and a plan to address the continuing apparent violations of the 2003 Order's ammonia interim effluent limitations. DEQ issued additional NOVs on March 30, 2005 and May 10, 2005 to REIC/Koogler for late submittal of the permit application, failure to submit a facility closure plan, failure to submit a draft financial assurance mechanism, and for unpermitted discharges following the expiration of the Permit. The proposed Order, signed by REIC on July 12, 2005, would require REIC to connect to the Rockbridge County sewer line extension when available (approximately December 2006), go offline and close out the STP. The Order also requires REIC to deposit \$25,000 in an Irrevocable Standby Letter of Credit as a financial assurance mechanism for use in the operations and closure of the Facility should REIC cease operations of the Facility before connection to the proposed Rockbridge County sewer line extension and proper closure of the Facility. The Order provides interim effluent limitations and acts as the operating permit for the facility until its closure, since the owner was unable to provide the documents necessary to obtain a VPDES permit. Civil Charge: \$9,600.

Liberty Fabrics Division of Sara Lee Intimate Apparel, Rockbridge County - Consent Order w/Civil Charge: The Liberty Fabrics Division of Sara Lee Intimate Apparel ("Liberty") operates a wastewater treatment plant under VPDES Permit No. VA0001554. In a letter dated November 3, 2003, the Department notified Liberty that its Permit would expire on November 3, 2004 and that the deadline for submitting a complete application for reissuance of the Permit was May 7, 2004. Although DEQ received Liberty's application on May 7, 2004, the application was not complete. Deficiencies included failure to pay the permit application fee, failure to adequately identify drainage areas for certain outfalls, and failure to make certain necessary signatures. The permit application fee was paid on or about May 28, 2004 and Liberty submitted the information necessary to complete the application



on or about July 1, 2004. Because of the delay in completing the permit application, the Permit expired on November 3, 2004. DEQ diligently processed the completed application, but Liberty was slow to respond to the draft permit. On February 14, 2005, DEQ issued a Notice of Violation to Liberty alleging that Liberty had not submitted a complete and timely application for reissuance of the Permit and that Liberty had continued to operate its wastewater treatment plant after the Permit had expired. The Permit was reissued on March 23, 2005. The Order before the Board requires payment of a civil charge for the violations alleged in the NOV. No injunctive relief is necessary. This civil charge is based on major gravity-based component for operating without a permit (because of five months of operation without a permit), a moderate gravity-based component for not submitting a timely and complete application for reissuance, and a multiplier for the fact that the Liberty wastewater treatment plant is a major facility. Civil Charge: \$2,400.

United States Army and Alliant Ammunition and Powder Company, LLC, for the Radford Army Ammunition Plant, Pulaski and Montgomery Counties - Consent Order w/Civil Charge: Alliant Ammunition and Powder Company, LLC ("Alliant") is the contract operator for the U.S. Army of the Radford Army Ammunition Plant ("RAAP"). In a letter dated April 15, 2004, the Department notified Alliant that the VPDES Permit for operation of a wastewater treatment plant at RAAP would expire on April 28, 2005 and that the deadline for submitting a complete application for reissuance of the Permit was October 28, 2004. DEQ received Alliant's application on November 3, 2004, six days after the deadline. DEQ sent Alliant a letter explaining deficiencies in the application on December 3, 2005. Alliant provided information that completed the application as of December 7, 2004. Because of the delay in completing the permit application, the Permit expired on April 28, 2005. On May 16, 2005, DEQ issued a Notice of Violation to Alliant and the Army alleging that Alliant had not submitted a complete and timely application for reissuance of the Permit and that Alliant had continued to operate the RAAP wastewater treatment plant after the Permit had expired. The Permit was reissued on June 10, 2005. The Order before the Board requires payment of a civil charge for the violations alleged in the NOV. The Order also settles other minor violations that occurred in 2004 and 2005. No injunctive relief is necessary. Civil Charge: \$1,800.

Sanville Utilities / Henry County Public Service Authority; Fairway Acres STP and Westwood Lagoon, Henry County - Consent Order Amendment: Fairway Acres STP and Westwood Lagoon are sewage treatment facilities for residential subdivisions in Henry County. Sanville Utilities Corporation ("Sanville") owned both facilities. In September 1999, the State Corporation Commission ("SCC") revoked the corporate status of Sanville. When Sanville ceased operating the facilities in the fall of 1999, the SCC appointed the Henry County PSA as Receiver for Sanville. The PSA has been operating the Sanville facilities since that time. Numerous inspections and citizen complaint responses by DEQ from 1996 through 1999 documented chronic substandard operation of the Fairway Acres STP by Sanville. Specific problems included excessive influent flow and BOD<sub>5</sub> and TSS violations. Although the PSA has improved effluent quality since it began operating the plant, the Fairway Acres STP continues to have effluent limit violations. Many of the improvements necessary to handle current flows at the STP would require major capital investment. The long-term solution proposed by the PSA is direct connection of Fairway Acres and the Westwood Subdivision to public sewer, followed by closure of both wastewater treatment plants. In May 2002, the Board issued a consent order to the PSA requiring submittal of a closure plan for the Lagoon by June 1, 2003 and connection of both Westwood and Fairway to public sewer by December 31, 2003. In May 2003, the PSA requested an extension of the connection deadlines because of delays in obtaining easements for the necessary connecting lines for both facilities. The PSA needed to have these easements before it could secure USDA Rural Utilities Service funding for the project. The Board granted an extension until June 30, 2004 for connection. In January 2004, citing continuing difficulties with obtaining easements, the PSA



requested another extension of the connection deadline. As of November 2004, the PSA had obtained the easements and had put the project out to bid. Because all bids came in higher than available funding, the PSA had to re-bid the project. As of June 2005, all construction contracts had been awarded. Construction had commenced as of early August 2005. The Amendment before the Board would grant the PSA's request to extend the deadline for connection of Fairway Acres and Westwood Subdivision to public sewer. Using data from recent STP performance, the Amendment would also tighten the interim effluent limits for the Fairway Acres STP that were granted by the May 2002 Order. The new connection deadline would be October 1, 2006. Civil Charge: none.

Town of Rich Creek – Rich Creek Wastewater Treatment Plant, Giles County - Consent Special Order w/Civil Charge: The Town of Rich Creek received VPDES permit number VA0021041 to operate the Rich Creek Wastewater Treatment Plant on June 16, 2003. The permit required the Town to submit a pretreatment survey of all Industrial Users discharging to the POTW no later than December 19, 2003. The survey was not received until May 5, 2004. The permit also requires that the Town submit Discharge Monitoring Reports (“DMRs”) no later than the 10<sup>th</sup> day of month after monitoring takes place. The DMRs for October and November 2003 and February 2004 were postmarked or faxed to the DEQ on November 12, 2003, December 11, 2003, and March 15, 2004, respectively. On April 14, 2004, the DEQ issued a Notice of Violation for the pretreatment survey and DMR submittal violations. The permit also required the Town to begin monitoring for E. coli no later than December 16, 2003. The Town was required to obtain at least 12 data points and submit a written notice by June 2, 2004 with the data collected during the demonstration period. The purpose of the monitoring and demonstration period was to show that by meeting the Total Residual Chlorine (“TRC”) standard, the Town was also meeting the E. coli standard. The Town did not perform the required E. coli monitoring. On August 10, 2004, the Department issued a Notice of Violation to the Town for failure to do the E. coli monitoring. The Order assesses a civil charge of \$1,641 for three consolidated violations of monitoring and submission requirements and recovery of the economic benefit of non-compliance for failing to conduct the E. coli study. The Department has received a sufficient number of E. coli studies from other facilities that confirm the direct relationship between meeting TRC effluent limits and meeting the E. coli standard that it is no longer necessary for the Town to conduct the E. coli study. A review of the effluent data submitted to the Department indicates that the Town was in compliance with the TRC limit during the period from December 2003 through July 2004. It may therefore be inferred that the Town did meet the E. coli standard and did not adversely impact state waters. Accordingly, it is not necessary for the Town to conduct the study. Civil Charge: \$1,641.

Motion Control Industries, Inc., South Hill - Consent Special Order w/Civil Charge: On July 12, 2004, DEQ conducted an inspection of Motion Control's South Hill facility and found the facility operating without coverage under the general permit, and noted the discharge of wastes to State waters. The DEQ noted two point sources with visible oil stains, and oil sheens on the water below the point sources. The point sources discharge to wet weather ditches that flow into an unnamed tributary of Flat Creek; the inspector obtained photographic evidence that wastes were in the unnamed tributary. On July 16, 2004, DEQ received a no exposure certification and a registration statement for coverage under a VPDES general permit from Motion Control. On July 21, 2004, the DEQ notified Motion Control that the no exposure exemption was not applicable to the facility. As of February 2005, no Storm Water Pollution Prevention Plan (SWPPP) had been submitted to DEQ and thus a Notice of Violation was issued on February 3, 2005. On February 24, 2005, the DEQ received a draft SWPPP from Motion Control, and on March 1, 2005, the DEQ and Motion Control met to discuss the SWPPP and the impending enforcement action. Subsequently, Motion Control submitted a complete SWPPP and on March 14, 2005, DEQ issued coverage under the VPDES general permit. The Order assesses a

civil charge and requires that Motion Control maintain compliance with the general permit as a requirement of the Order for one year. The DEQ will perform unannounced inspections of the facility during that time to ensure compliance with the Order and the permit. Civil Charge: \$16,660.

Midkiff Farm, Inc., Cumberland County - Consent Special Order w/ Civil Charge: Responding to a pollution complaint, DEQ inspected Midkiff Farm on February 7, 2005. The complaint alleged that dead chickens were being buried in metal feed bins near the Midkiff farm pond. The farm pond flows into an unnamed tributary to the Willis River. During the inspection the DEQ verified that Midkiff had indeed disposed of approximately 500 dead chickens in the manner described in the complaint. The DEQ did not observe any impact to surface waters; however, such illicit disposal poses a risk for groundwater contamination and to human health. The authorized method for disposal of dead chickens covered under the VPG general permit are by composting, incineration, or rendering; Midkiff has chosen to compost. The DEQ informed Midkiff that compost pile(s) should have been created in the litter storage building until space was available in the composter. Midkiff could also have disposed of the dead chickens at a permitted landfill. The Order assesses a civil charge, and presently there are no other outstanding compliance issues. Civil Charge: \$1,750.

H. P. Hood, LLC dba Crowley Foods, Bristol - Consent Special Order w/Civil Charge: DEQ staff, responding to a pollution complaint, discovered that H.P. Hood, LLC, dba Crowley Foods, spread whey waste from cottage cheese manufacture on the Sally Hazel Farm in Washington County. VPA Permit No. VPA02503 authorizes whey waste disposal on one Scott County Virginia farm but none in Washington County. Disposal on the Sally Hazel farm was therefore a violation of Crowley Food's VPA Permit. The VPA Permit issued to Crowley Foods was originally issued to Flav-O-Rich, Inc. The original permit included the Sally Hazel farm as an approved disposal site. When the permit was reissued in 2001, Flav-O-Rich dropped the Hazel farm from the list of sites where whey waste would be applied. The permit was modified in 2003, for a change of ownership, when H.P. Hood bought the business. While cooperative ownership changed in 2003, personnel involved (the plant manager, the contract hauler, etc.) have not changed. To remedy these violations, the proposed Consent Special Order requires Crowley Foods to, among other things, 1) report any unusual or extraordinary discharge of waste at the processing plant as quickly as possible but no later than 24 hours after the event, 2) revise and maintain the Operations and Maintenance Manual for the treatment works/pollutant management system, 3) develop and maintain a comprehensive whey disposal plan to include a hauling manifest system and record keeping and reporting system, 4) implement an employee training system for management of waste handling and disposal, and 5) pay a civil charge. Civil Charge: \$5,000.

Royster Clark, Inc., Westmoreland County - Consent Special Order – w/Civil Charge: The Royster Clark, Inc. Kinsale facility was formerly named Northern Neck Fertilizer Co. which was owned by Lebanon Chemical Corporation. The facility was a liquid fertilizer manufacturing-mixing-distribution dealership that also stored crop protection chemicals (insecticides, herbicides, fungicides) onsite for retail sale to farmers. A Consent Order was issued to Lebanon Chemical on August 26, 1993, to remediate site contamination to soil and groundwater. This Order was closed and a new one issued to Royster Clark on July 6, 1999. The new Order required the Facility to comply with the same Corrective Action Plan (CAP) for groundwater remediation that was required by the 1993 Order. A VPA permit was issued on September 1, 1993 and modified on December 29, 1998, to reflect Royster Clark as the new owners. In a December 18, 1998 letter, Royster Clark agreed to accept all conditions and requirements of the permit. Royster Clark – Kinsale failed to submit a permit reapplication by the required due date of March 1, 2003. An incomplete application was received on March 3, 2003, and returned on March 5, 2003. Another incomplete application was received on April 8, 2003 and

returned by the Department on April 9, 2003. The Permit expired on September 1, 2003, and an NOV was issued on October 23, 2003 for failure to submit a complete permit application. During the permitting process, Royster Clark submitted a Corrective Action Plan to address groundwater contamination at the Kinsale facility. This Order requires that the Facility, monitor offsite wells for groundwater impacts and place a notice in the property deed to inform potential buyers of the environmental issues at this Facility. Civil Charge: \$2,700.

Commercial Carrier Corporation, West Point - Consent Special Order w/ Civil Charge: On February 18, 2004 a release occurred at the Commercial Carrier facility when a tanker truck drove away from an above ground diesel fuel tank with the hose nozzle still attached. The released fuel flowed down a slope and into a storm water drainage ditch. An environmental contractor responded to the release and contained it. Subsequent cleanup procedures were commenced and approximately 203 tons of contaminated soil was excavated. The Department first learned of the release on October 19, 2004, when the contractor who was hired to remediate the site submitted a corrective action final report on behalf of Commercial Carrier Corporation. A Site Characterization Report was submitted on March 30, 2005, which showed that the contaminated soil had been excavated and there was minimal impact to the soil and groundwater. The order only requires the payment of a civil charge. The contaminated soil has been removed and the remaining soil has been analyzed to demonstrate that there is no contamination left in the remaining soil. Civil Charge: \$714.

Q-Markets, Inc., Henrico County - Consent Special Order - w/Civil Charges: In 2001, during a property transaction investigation, petroleum contamination was found in the soil and ground water at the Q-Markets facility located at 8701 Staples Mill Road, in Henrico County. DEQ responded to this report by requesting that Q-Markets submit an Initial Abatement Measures Report, and then to follow it with a Site Characterization Report (SCR). In March 2004, DEQ mailed a Warning Letter to Q-Markets for failure to submit a complete Site Characterization Report. In response to the Warning Letter, Q-Markets submitted partial information to DEQ which did not satisfy the requirements of the SCR. DEQ requested that a complete Site Characterization Report be provided in August 2004. The SCR was not provided and on February 24, 2005, DEQ issued a Notice of Violation for failure to submit a complete Site Characterization Report for the site. In March 2005, Q-Markets hired a consultant to complete the Site Characterization Report. The report is due on October 15, 2005. The order requires Q-Markets to submit a complete Site Characterization Report by October 15, 2005 and pay a civil charge. Civil Charge: 3,500.

Sam's East, Inc., Colonial Heights - Consent Special Order w/ Civil Charge: On July 16, 2004 the Department was notified by a cleanup contractor that a release of approximately 1,000 gallons of gasoline had occurred on November 25, 2003, at a Sam's Club gasoline station at the Southpark Mall in Colonial Heights, Virginia. The released gasoline flowed across sloped pavement and into a sandy, storm-water catch basin where it was promptly excavated and removed. On July 21, 2004, Oil Transport, Incorporated faxed the Department notification of the release. Subsequent documentation provided by Oil Transport indicated that the actual release was less than initially reported. The resulting environmental harm was minimal, and a Site Characterization Report received from Oil Transport on December 12, 2004, indicated there was no remaining petroleum contamination in the soil or groundwater. The release resulted from an inexperienced driver filling an Underground Storage Tank (UST). Once the release was identified, immediate actions were taken to stop the release and a consultant firm was promptly called to remove the contaminated soil containing the petroleum. The Department was initially notified of the release through a third party months after the event. Civil Charge: \$625.

Prince George County - Consent Special Order w/ Civil Charge: In 1998 Prince George County, owner and operator of the Food Lion Water System, was mailed a Noncompliance Letter notifying the County that they failed to apply for a groundwater withdrawal permit for withdrawing water from the Food Lion Water System. Two months after receiving the Noncompliance Letter, the County submitted to DEQ an application for the permit. DEQ notified the County that the application was incomplete and after additional correspondence, the County was issued a Notice of Violation on February 23, 2005 for failure to submit a complete permit application and for withdrawing groundwater without a permit. In a meeting with the County on April 7, 2005, the County provided the rest of the information required to complete the permit application. The order requires that the County pay a civil charge. In the spring of 2005, the County submitted information to complete the groundwater withdrawal permit application, and no further corrective action is required. The cost of the injunctive relief portion of the order is reported to be approximately \$33,000 covering the cost of drilling a monitoring well and performing pump tests. Civil Charge: \$3,000.

Mr. Allison Ridner, Westmoreland County - Consent Special Order w/Civil Charge: On February 23, 2005, DEQ received a report of unauthorized clearing, excavating, grading and filling of state waters and wetlands on property owned by Mr. Ridner in Westmoreland County. On March 23, 2005, DEQ and the County met at Mr. Ridner's property for a site inspection and observed that the wetland vegetation had been cleared and grubbed, the stream had been piped and fill material had been placed over some of the pipe. On June 2, 2005, DEQ issued a NOV to Mr. Ridner for the unauthorized activities. DEQ and the County met with Mr. Ridner on June 17, 2005 to discuss resolution of the unauthorized impacts to state waters, including the wetlands. Mr. Ridner decided to remove the pipe and restore the stream channel and wetland vegetation. The order requires the owner to restore the stream and adjacent wetlands on his property. The plan is to begin restoration of the stream and wetlands this fall. Due to various options available to restore the property, the cost of the injunctive relief portion of the order is unknown at this time. Civil Charge: \$1,050.

Noor Oil, Inc., Augusta County - Consent Special Order w/ Civil Charge: Noor Oil, Inc. (Noor) owns and operates an underground storage tank (UST) facility located at 713 Tinkling Springs Road, Fishersville, Augusta County, Virginia. Noor stores petroleum in these USTs under the requirements of 9 VAC 25-580-10 et seq. Underground Storage Tanks: Technical Standards and Corrective Action Requirements (UST Regulations). The UST regulations require that owners and operators of UST facilities protect USTs and associated piping from corrosion, install overfill prevention equipment, perform release detection on the USTs, properly register USTs, and maintain compliance records for DEQ review. A December 16, 2003, formal UST inspection performed at the facility and review of submitted documentation between the inspection date and December 2004 revealed that Noor was not performing release detection on the USTs and the associated piping. Noor also failed to maintain compliance records for DEQ review. DEQ issued a Warning Letter (WL) to Noor, dated December 24, 2003, for these alleged violations. Noor failed to resolve the alleged violations and subsequently entered into a Letter of Agreement (LOA) with the DEQ which required compliance with the UST regulations by September 30, 2004. Noor failed to resolve the violation by the deadline and DEQ issued a NOV on December 15, 2004. On December 21, 2004, Noor representatives met with DEQ staff to discuss resolution of the NOV and to inform DEQ of its intention to bring the USTs into compliance with the regulation by January 5, 2005 and to begin performing release detection. Noor failed to meet this self-suggested deadline. Noor has installed the correct leak detection equipment on the applicable USTs and has begun performing release detection and submitting the records for each of the USTs to DEQ. This has been done in accordance with the conditions of Appendix A in the Order. One additional monthly release detection report is due in September 2005. Civil Charge: \$2,500.



Development of Virginia's FY 2006 Clean Water Revolving Loan Funding List: Title VI of the Clean Water Act requires the yearly submission of a priority funding list and an Intended Use Plan in conjunction with Virginia's Clean Water Revolving Loan Fund (VCWRLF) Federal Capitalization Grant application. Section 62.1-229 of Chapter 22, Code of Virginia, authorizes the Board to establish to whom loans are made, loan amounts, and repayment terms. In an effort to begin the process, the Board needs to consider its FY 2006 loan requests, tentatively adopt a FY 2006 funding list based on anticipated funding, and authorize the staff to receive public comments. On May 27, 2005, the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 15, 2005 was established as the deadline for receiving applications. Based on this solicitation, the Board received twenty-two (22) wastewater improvement applications requesting \$347,926,291 and one \$225,000 Brownfield loan application for a total of twenty-three (23) applications requesting \$348,151,291 in loan assistance. All 22 wastewater applications were evaluated in accordance with the program's "Funding Distribution Criteria", as revised, and the Board's "Bypass Procedures". In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type, impact on state waters, the locality's fiscal stress, and the project's status or readiness-to-proceed. In addition, the Brownfield remediation application was reviewed and verified that it was an eligible water quality project. The staff also reviewed each project's anticipated construction schedule to determine if the proposed project was scheduled to move to the construction stage during calendar year 2006. Two of the Board's FY 2006 applications (Harrisonburg-Rockingham RSA and Town of Woodstock), and a substantial portion of a third application (HRSD/Atlantic STP Expansion/Contract C), indicated that those projects would not proceed to construction until calendar year 2007. The Board's by-pass criteria provide for these projects to be bypassed during 2006 and reconsidered in subsequent funding cycles. In addition, two projects at the bottom of the funding list (HRSD Incinerator and HRSD Odor Control) were determined to not be directly related to water quality improvement and are not being recommended for funding. After priority consideration and the review and confirmation of anticipated construction schedules, Virginia's FY 2006 project loan need was reduced to 19 projects totaling \$187.3 million, and the staff believes that all 19 projects are directly related to water quality improvement. Based on current and projected cash resources, and considering the additional funds that can be made available through leveraging, the Board will have sufficient funds available to honor all of these requests through a leveraged loan program.

Dinwiddie County Wastewater Authority – Formal Hearing VPDES Permit No. VA0081779: In drafting the Dinwiddie Courthouse VPDES permit the DEQ staff followed a 10/29/04 agency guidance memo and added a new condition requiring that all DMR data be reported to the level of accuracy of the test method used. This new condition was intended to correct an inconsistency in the way permittees were reporting their monitoring results. Some permittees were reporting their data to several decimal places, while others were rounding their results to the same number of decimal places as the permit limit. The permittee is appealing this permit condition on the basis that the DEQ staff cannot impose a data reporting requirement that has more significant figures than the permit limit. They contend that such a requirement must first go through the public participation process required by the Virginia Administrative Process Act. A formal hearing on this issue will be conducted at the September Board meeting. Each side will be represented by attorneys who will present their respective positions by questioning and cross examining witnesses. The Board will be represented by its own attorney who will be available for advice on procedural and legal issues.